

REMARKS/ARGUMENTS

The Office Action has been carefully considered. Claims 19, 26, and 29 are currently amended to correct informalities. Claims 1-31 are pending. In the Office Action, the following issues were raised.

1. Claims 19, 26, and 29 were objected to because of informalities;
2. Claims 1-4, 7-15, and 19-31 were rejected as being unpatentable under 35 U.S.C. § 103(a) over Robinson's Technical Report, "SHORTEN: Simple lossless and near-lossless waveform compression" (hereinafter "*Robinson*") in view of Published U.S. Patent Application Pub. No. 2002/0094535 to Nadon et al (hereinafter "*Nadon*");
3. Claims 5-6 were rejected as being unpatentable under 35 U.S.C. § 103(a) over *Robinson* in view of *Nadon* and further in view of Hasegawa-Johnson et al.'s paper, "Speech coding: fundamentals and applications" December 2002 (hereinafter "*Johnson*");
4. Claims 16 and 18 were rejected as being unpatentable under 35 U.S.C. § 103(a) over *Robinson* in view of *Nadon* and further in view of U.S. Patent No. 6,094,636 to Kim (hereinafter "*Kim*");
5. Claim 17 was rejected as being unpatentable under 35 U.S.C. § 103(a) over *Robinson* in view of *Nadon* and further in view of U.S. Patent No. 3,694,813 to Loh (hereinafter "*Loh*").

Objections

Applicant thanks the Examiner for pointing out informalities in Claims 19, 26, and 29. The indicated informalities are corrected by current amendments to Claims 19, 26, and 29.

35 U.S.C. § 103(a) Rejections

In the Office Action, Claims 1-4, 7-15, and 19-31 were rejected as being unpatentable under 35 U.S.C. § 103(a) over *Robinson* in view of *Nadon*. Claims 5-6 and 16-18 were rejected as being unpatentable under 35 U.S.C. § 103(a) over *Robinson* in view of *Nadon* and one of *Johnson*, *Kim*, or *Loh*. Applicants respectfully submit that Claims 1-31 are allowable over the cited art for at least the reasons discussed below.

It was clear error to assert that one of ordinary skill in the art would have been motivated to combine *Robinson* with *Nadon*, a non-analogous piece of art.

To rely on a reference under 35 U.S.C. 103, the reference must be analogous prior art. MPEP 2141.01(a). To determine whether a reference is analogous art, “the similarities and differences in structure and function of the inventions” carries great weight. *Id.* (quoting *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973)).

Furthermore, “The determination of what arts are analogous to a particular claimed invention... depends upon the **necessary essential function or utility of the subject matter** covered by the claims....” Two examples are given: “a tea **mixer** and a concrete **mixer** may both be regarded as relating to the **mixing** art, this being the necessary function of each. Similarly a brick-**cutting** machine and a biscuit **cutting** machine may be considered as having the same necessary function.” MPEP 904.01(c).

For at least the reasons discussed below, Applicants respectfully submit that it was clear error for the Office Action to assert that one of ordinary skill in the audio compression and transmission arts would have been motivated to combine teachings of *Robinson* with those of *Nadon*, which is directed to an unrelated field of endeavor.

Claim 1 is directed to a method of compressing audio data for transmission according to the following recitations:

- applying a prediction filter to a unit of audio signal data;
- determining a distribution substantially representative of residual data generated as part of said applying of a prediction filter to the unit of audio signal data, wherein determining a distribution comprises determining a plurality of statistical measures, including at least one of a skewness of the distribution, and a kurtosis of the distribution; and
- transmitting in substance the unit of audio signal data to a recipient, utilizing the determined distribution to assist in reducing the amount of data having to be transmitted.

Thus, the field of endeavor surrounding Claim 1 is related to the audio compression and transmission arts.

By contrast, *Nadon* is directed to an entirely different field and utility, namely “a process for making evaluations which objectify analyses of **data obtained from hybridization arrays** [and] removing **systematic error present in replicate genomic samples.**” Field of the Invention. *Nadon* goes on to describe the subject matter towards which it is directed by “Array-based genetic analyses start with a large library of cDNAs or oligonucleotides (probes),

immobilized on a substrate. The probes are hybridized with a single labeled sequence, or a labeled complex mixture derived from a tissue or cell line messenger RNA (target).” Col. 1 lines 27-30. Thus, *Nadon*’s field of endeavor is related to genomics and array-based genetic analysis.

Accordingly, Applicants respectfully submit that it was clear error for the Office Action to treat *Nadon*, which is directed to genomics, as analogous art to Claim 1, which is directed to audio compression and transmission.

Indeed, Applicant respectfully submits that one of ordinary skill in the art who is considering the problem of compressing audio for transmission (as in Claim 1) would be completely **unaware** of references from genomics, a **completely unrelated** field of endeavor. Therefore, one of ordinary skill in the art of audio compression could not possibly have had a motivation to make the asserted combination.

Moreover, Applicant respectfully submits that amended Claim 1 is not obvious in light of the cited references because the subject matter of amended Claim 1 has an entirely different **essential function or utility** from the subject matter of *Nadon*.

According to the essential function test mandated by the MPEP, *Nadon* is not analogous art to amended Claim 1 because *Nadon*’s necessary function is **detecting and removing errors from genomic samples**. In other words, *Nadon* begins with a set of data that contains errors, and its essential function is removing those errors.

By contrast, the necessary function of amended Claim 1 is **compressing audio signal data for transmission**, not removing errors. Indeed, the inherent point of audio compression is to minimize the data that needs to be transmitted so that a set of audio signal data can be recreated, wherein the re-created signal **preserves salient characteristics the original**. In other words, the necessary function of an audio compressor, such as that claimed in amended Claim 1, is to preserve data, not to discard errors, as in *Nadon*.

Accordingly, Applicant respectfully submits that *Nadon* cannot properly be considered analogous prior art and that the Office Action clearly erred in determining to the contrary. As a result, Applicant respectfully submits that amended Claim 1 cannot be said to be obvious considering *Robinson* in view of *Nadon* at least because one of ordinary skill in the art would have had no motivation to make the asserted combination.

Independent Claims 19, 26, and 29 recite similar elements and are allowable by similar reasoning. Claims 2-18, 20-25, 27-28, and 30-31 are allowable at least by dependency.

CONCLUSION

For at least the reasons above, Applicants respectfully submit that Claims 1-31 are allowable and request that the Examiner permit these claims to proceed to issuance. Although additional arguments are believed to exist for distinguishing the cited documents, the arguments presented are believed sufficient to address the Examiner's rejections. Likewise, failure of the Applicants to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing arguments, and it is therefore not believed necessary to respond to every position taken by the Examiner with which Applicants do not agree.

The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to AXIOS Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,
AXIOS LAW GROUP

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